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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,013	05/03/2006	Robert F. Garry	129200013PCUS00	3051
23369	7590	06/28/2007	EXAMINER	
HOWREY LLP			KINSEY, NICOLE	
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2941 FAIRVIEW PARK DRIVE, SUITE 200			PAPER NUMBER	
FALLS CHURCH, VA 22042-7195			1648	
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			06/28/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/578,013

Applicant(s)

GARRY, ROBERT F.

Examiner

Nicole E. Kinsey, Ph.D.

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1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-25 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 1-6, having the technical feature of a method for identifying a compound using a viral fusion initiation region (FIR).

Group II, claims 7-12, having the technical feature of an isolated peptide comprising a FIR.

Group III, claims 13 and 16, having the technical feature of treating or preventing a viral infection by administering a compound identified by the method of Group I.

Group IV, claim 14, having the technical feature of treating or preventing a viral infection by administering a peptide of Group II.

Group V, claim 15, having the technical feature of treating or preventing a viral infection by administering a recombinant DNA molecule that enables or simulates production of a FIR.

Group VI, claims 17-18, having the technical feature of an isolated antibody.

Group VII, claim 19, having the technical feature of an isolated nucleic acid.

Group VIII, claims 20-23, having the technical feature of a method for producing an antibody.

Group IX, claims 24-25, having the technical feature of a method of identifying a viral fusion initiation region.

The inventions listed as Groups I-IX do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

Groups II-IX do not have a shared technical feature, and thus, lack unity with each other. The technical feature shared among the inventions listed as Groups I and III is a method for identifying a compound using a viral fusion initiation region (FIR). The noted shared technical feature does not provide a contribution over the prior art, as evidenced by the teachings of Atabani et al. (Journal of Virology, 1997, 71(10):7240-7245). Tables 2 and 3 of Atabani et al. disclose a peptide, which appears to be a functional segment of the FIR of SEQ ID NO:6. Atabani et al. teaches using this peptide as a target compound to identify binding antibodies from virus-induced antisera (Figure 1) and peptide-induced antisera (Table I). Atabani et al. further teaches using the identified anti-peptide antibodies to prevent infection in cultured cells (Table I) and in nonhuman patients (Figure 3). Hence, in the absence of a contribution over the prior art, the noted shared technical feature is not a shared special technical feature. Without a shared special technical feature, the inventions listed as Groups I and III lack unity with one another.

Further Restriction

If applicant elects Group II, applicant is further required to elect **one** of the 20 polypeptide sequences listed in claims 10-12 (SEQ ID NOs: 1-15, 22-25 and 30). Although the sequences share the function of being fusion initiation regions, the

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sequences do not share a common core sequence, and thus, lack unity with each other.

This is not a species election.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicole E. Kinsey, Ph.D. whose telephone number is (571) 272-9943. The examiner can normally be reached on Monday through Friday from 8:00 am to 5:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on (571) 272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nicole E. Kinsey, Ph.D.
Examiner
Art Unit 1648

/nk/

/Stacy B. Chen/ 6-25-2007
Primary Examiner, TC1600